IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 258 OF 2006
IN.
WRIT PETITION NO. 1211 OF 2005

M/s.Ocean Creations & anr. ... Appellants.
Versus.
Nandlal Nirmal and another. ... Respondents.

Shri Godfrey D'Silva for the Appellants.

None for the Respondents.

CORAM : KSHITIJ R.VYAS, C.J., &
ABHAY S.OKA, J.

DATE : 27th June, 2006.

P.C.:

1. The Appellants in this Appeal have challenged the order dated 5th May 2005 passed by the learned single Judge in Writ Petition No.1211 of 2005. The learned single Judge while confirming the award of the Labour Court granted reinstatement to the workman, but reduced the amount of backwages to the extent of 25%.

2. The Labour Court after appreciating the evidence on record recorded that the Appellants illegally terminated the services of Respondent No.1. The learned Counsel appearing for the Appellants submitted that the said finding recorded by the Labour Court is erroneous inasmuch as Respondent No.1 has remained absent for a long period of time and abandoned the service. It is not possible for us to accept the said submission. A

specific finding has been recorded that the Appellants did not appear before the Conciliation Officer. It is only for the first time in the written statement such a case was put forward that the Management had sent messages to the workman through his co-worker to resume duty. In the examination-in-chief of the witness for the Appellants, it is clearly admitted that he was unable to tell the name of the person through whom the message was sent. After appreciating the evidence on record, the learned Labour Court recorded a finding that the Management has failed to prove the case of abandonment of service by Respondent No.1. A specific finding has been recorded that there was an illegal termination of service.

3. The learned Single Judge has appreciated the entire evidence on record in the writ petition under Article 226 of the Constitution and has confirmed the findings recorded by the learned Labour Court. This Court, sitting in appeal, cannot reappreciate the said evidence.. In this view of the matter, it is not possible to accept the submission advanced by the learned Counsel appearing for the Appellants. The learned Counsel relied upon a decision of the Apex Court rendered in case of Firestone Tyre and Rubber Co.of India Pvt.Ltd. v/s. Workmen (1981 II LLJ 218). By citing this judgment, the learned Counsel tried to urge that the learned Labour Court exceeded its jurisdiction

while granting the reliefs in the matter. Since this point was never urged either before the learned Labour Court or the learned Single Judge, it is not possible for us to deliberate on the said contention in this Appeal. In any case, the learned Labour Court has rightly decided the matter on appreciating the evidence before it and the leaned single Judge has rightly refused to interfere with the same. There is no substance in the Appeal and the same is dismissed.

CHIEF JUSTICE

ABHAY S.OKA, J.